IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.1320/06
Padam Kumar Jain & Anr. Vs. Gyan Chand Jain & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sudesh Bansal for petitioners.
Shri A.K. Bajpai for respondent.

The petitioner no.1 who is defendant in the civil suit out of which the present proceeding arise has challenged the order dated 21.1.2006 whereby his application filed under Order 8 Rule 1(3) CPC for placing certain documents on record was dismissed. The petitioner filed that application on 9.11.2005 and in response to the application of the plaintiff respondent filed on 16.2.2005 under Order 7 Rule 14

CPC with which he placed on record the written tehreer of `pagri' tied over his head when according to him he was adopted as son by deceased Gopi Chand which was signed by his relations and members of the community on 9.9.91 and photographs of that occasion. The defendant wanted to rebut those documents and therefore filed the aforesaid application under Order 8 Rule 1(3) CPC to place on record the written tehreer of pagri tied over his head on account of the fact that the deceased Gopi Chand had bequeathed all his properties by a will to him and photographs of that occasion. The learned trial court dismissed the application. Hence this writ petition.

Shri Sudesh Bansal, the learned counsel for the petitioner argued that

the learned trial court was not justified in doubting the genuineness of the documents at the stage of considering application under Order 8 Rule 1(3) CPC. Documents being old one were having signatures of seven persons who attended the pagri ceremony. Photographs were of such an old occasion and their negatives could not be created. Documents ought to have been taken on record particularly when the stage of cross examination of the witnesses of the plaintiff had not yet arrived. Refusal to take documents on record has violated legal right of the petitioner in as much as the learned trial court ought to have taken a liberal approach because when documents of the plaintiff had been taken on record, the defendant also had the right of rebuttal.

Shri Sudesh Bansal learned counsel for the petitioner in support of his arguments relied on the judgment of this Court in Bhajan Lal Vs. Phoosa Lal, RLW 1994 (1) 294, Sharif Painter Vs. M/s. Chetna Hotel & Properties Ltd. & Ors., 2001(4) 111 and Santveer Singh Vs. Addl. Civil Judge, Hanumangarh & Anr., 2004 (3) WLC 397.

On the other hand Shri A.K. Bajpai, the learned counsel for the plaintiff respondent opposed the writ petition and submitted that the learned trial court has given valid and cogent reasons for rejecting application and refusing to take the documents on record. While plaintiff had asserted that he was adopted son of deceased Gopi Chand and had categorically mentioned in the plaint

about the pagri being tied over his head and factum of his being adopted son of late Shri Gopi Chand, but no such assertion was made by the defendant in the written statement and the written tehreer and photographs which were sought to be produced were all subsequently created. He relied on the judgment of this Court in Jagjit Cotton Textiles Mills Ltd. & etc. Vs. UOI & etc., AIR 1990 Raj. 20.

I have given by thoughtful consideration to the arguments advanced by learned counsel for the rival parties and perused the material on record.

Whether or not in a particular case, documents sought to be placed on record by way of rebuttal or otherwise, should be taken on record, would always depend

upon their nature, their relevancy to the controversy involved in the matter as also the stage when such documents are sought to be placed on record. Merely because the Court has allowed the application of the plaintiff under Order 7 Rule 14 CPC, accepting certain documents on record does not mean that application filed by the defendant under Order 8 Rule 1(3) CPC should be straight away accepted by the Court without applying its mind to the relevance of the documents and their necessity to be brought on record as also the pleadings and bona fides of the parties. In the present case, the trial court has found that pleadings regarding pagri ceremony for consideration of which the documents and photographs were allowed to be taken

on record at the instance of the plaintiff were very much available in the plaint but the defendant merely asserted his right about the disputed property on the basis of a will but he did not at all mention anything about the same pagri ceremony in his written statement. It was in this context that the learned trial court noted that though the plaintiff asserted the fact that the pagri being tied on his head in recognition of his being adopted son of Gopi Chand, but there was no such pleading by the defendant in his written statement, therefore, the defendant could not be permitted to assert a fact which does not find place in the written statement by recourse to application under Order 8 Rule 1(3) CPC. The citations relied upon

by learned counsel for the petitioner are all related to the cases where documents were refused to be taken on record on account of delay and the opposite party being compensated by way of cost, therefore, those judgments are distinguishable on facts of this case.

In the facts of the case, therefore, I do not find that the learned trial court has committed any error of law while rejecting the application of the defendant. Their being no merit in the writ petition, the same is dismissed.

(Mohammad Rafiq),J.

RS/-